IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1977

No. 78-628

JOHN HUTTER
Petitioner

vs.

LAKE VIEW TRUST and SAVINGS BANK, et al
Respondents

Petition for a Writ of Certiorari to the Appellate Court of Illinois ~~and the Supreme Court of Illinois.~~

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JOHN HUTTER, Petitioner

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Petiton for a Writ of Certiorari to the Appellate Court of Illinois and the Supreme Court of Illinois.

(a) With reference to the question of a preliminary injunction, the Appellate Court of Illinois quotes (Ill. Rev. Stat. 1975 ch. 110A par 307 (a) (1.) Statistical Fab. Corp. v. Huack (1972) 5 Ill. App. 3d 50, 282 N.E. 2d 524) (Hoffman v. City of Evanston (1968) 101 Ill App. 2d 440, 444, 243 N.E. 2d 478, 480; County of DuPage v. Robinette (1966) 77 Ill App 2d 167, 221 N.E. 2d 769; East Side Health District v. Village of Caseyville (1962) 35 Ill App 2d 443 183 N.E. 2d 30) - and many other cases to the effect that Hutter's loss of homestead building would not do "irreparable" harm to him.

The court further quotes "Gerber v. First National Bank (1975) 30 Ill App 3d 776, 780 332 N.E. 2d 615, 618, "grants a right to dismiss, thus fostering orderly procedure and relieving litigants and courts of unnecessary burdens associated with multiple actions". Here the court cites a case which should be in favor of Hutter's claim of multiplicity of suits.

(b) This court should take jurisdiction because due process is ignored. Hutter's right to protect his homestead pending juries verdict and his right not to be subject to multiple suits on the same subject matter was denied.

(i) Judgement in the Appellate Court of Illinois Fifth Division, was entered November 4, 1977.
Hutter's petition for leave to appeal to the Supreme Court of Illinois was denied March 30, 1978.

(ii) No extension of hearing.

(iii) The decision of the courts of Illinois deny Hutter his rights of due process and protection under Amendment 14 of the Constitution of the United States.

(c) The questions presented for review are:

1. Did the lower courts err and deny due process when they refused in equity, to protect the homestead of plaintiff pending outcome of the complaint?

2. Did the lower courts err and deny due process when they permitted defendant bank to start and file a suit in another court against plaintiff involving the same subject matter, instead of filing a cross complaint, thus forcing plaintiff to file and pay for another jury demand and respond to a multiplicity of suits?

(d) The constitutional provision involved here is due process under Amendment 14 of the Constitution of the United States.

(e) Plaintiff Hutter as a boy of fourteen, over sixty five years ago, opened his first savings account in the defendants bank and had a close relationship and relied upon the bank Lake View, with implicit confidence.

Hutter is a customer of the Bank of Sturgeon Bay, Wis. That bank bought bonds for Hutter and made collerateral loans thereon.

Lake View convinced Hutter to let them pay off the collerateral loan to the Sturgeon Bay bank and transfer it to Lake View. They said they would loan Hutter considerably more money so he could buy other corporate bonds and the interest they would charge him would be lower than the Bank of Sturgeon Bay so that the interest earned on the bonds would be greater than that charged by Lake View. They also made a loan on Hutter's building unknown to Hutter. The ownership of the bank changed and so did their policy to Hutter.

The bank increased interest rates to 11% which was 4% above what Hutter received on his bonds. They promised the rate would be reduced just around the corner.

Finally Hutter was told the rate would not be reduced. Hutter could have paid the bank off and transfered the loan back to the Sturgeon Bay bank. He instead was persuaded to let the bank sell the securities. Lake View said the proceeds would have over some $20,000.00 in bonds and the collateral loan on Hutter's homestead would be placed on a low monthly payment basis and the interest rate would be less than 9%.

Hutter was shocked when he was told he would receive no bonds and would have to pay off the loan on the building in about sixty days. He saw no solution except to go to a chancery court and ask for justice.

The entire record supports above stated facts:

(f-g) Hutter believes that a just solution to this matter would be to dismiss the action filed by Lake View in the law division and require the bank to file a cross complaint in the chancery action and reimburse Hutter for any costs sustained, and refrain from trying to sell Hutter's homestead pending outcome of this action.

Courts generally seem to favor large law firms, attorneys who appear before them over the years and friends and former law partners. The stray individual attorney is scorned.

The multiple suit by Lake View was intended to harass Hutter who must drive 500 miles to make each court appearance. At 79 this is very difficult.

Hutter prays that the court will grant the Writ of Certiorari and see that he receives justice.

Respectfully submitted,

John A. Hutter,
Attorney at Law, pro se

APPENDIX

Fifth Division
November 4, 1977

Nos. 76-1472)
76-1683)

JOHN HUTTER, Plaintiff-Appellant,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY
v.	)	
LAKE VIEW TRUST AND SAVINGS BANK and MERRILL, LYNCH, PIERCE, FENNER & SMITH, INC., Defendants-Appellees	)	HONORABLE NATHAN M. COHEN PRESIDING

Mr. PRESIDING JUSTICE SULLIVAN delivered the opinion of the court:

In these consolidated appeals, plaintiff seeks reversal of orders entered in two separate trial court actions.

In the first (76-1472), John Hutter (Hutter) petitioned on June 6, 1976, against defendants Lake View Trust and Savings Bank (the Bank) and Merrill Lynch Pierce Fenner & Smith, Inc. (Merrill Lynch) asking, in addition to an accounting and damages, that both defendants be enjoined from selling or otherwise disposing of certain securities and accumulated interest which had been pledged as collateral for loans, and that the Bank also be enjoined from taking any action in regard to a certain land trust until the ultimate disposition of the case. The Bank filed a

motion to dismiss and, on September 15, 1976, the trial court struck that portion of the petition which sought an injunction for failure to allege the lack of an adequate remedy at law and transferred the cause to the law division. On appeal from that order, Hutter contends that the trial court denied his right to due process of law by striking his request for equitable relief.

In the second case (76-1683), the Bank brought suit on July 30, 1976, against Hutter, seeking payment of a promissory note which it alleged was past due. Hutter answered and filed a cross-complaint against the Bank only, which contains substantially the same allegations as his petition in 76-1472. Both parties then filed motions to dismiss. On November 5, 1976, an order was entered denying Hutter's motion to dismiss the Bank's action, and a separate order granted the Bank's motion to dismiss on the basis that "another action is pending between the same parties for the same cause", the other being the suit files on June 6, 1976. On appeal from these orders he contends that he was deprived of "his day in court".

OPINION

While Hutter has continually maintained in 76-1472 that the trial court denied him due process of law by striking his petition for an injunction to preserve the status quo, for the first time in his

reply brief he identifies the basis of the due process contention which he claims renders his remedy at law inadequate. His position is that actions taken by the Bank regarding his beneficial interest in a certain land trust will deprive him of his homestead. We cannot agree.

The granting or denial of an injunction which is interlocutory in nature is an appealable order. (Ill. Re. Stat.1975, ch. 110A, par. 307(a) (1); Statistical Tabulating Corp. v. Hauck (1972), 5 Ill. App.3d 50, 282 N.E.2d 524.)

> "A preliminary injunction is an extraordinary remedy which usually will issue only when it appears that irreparable harm might be done in the event that the status quo is not maintained pending the dispostion of a lawsuit. It is generally employed only in matters of great urgency, and then only with the utmost care and caution. (Citations.)" (Hoffman v. City of Evanston (1968), 101 Ill. App.2d 440, 444, 243 N.E. 2d 478, 480.)

To establish a right to an injunction, facts must be alleged positively with certainty and precision as opposed to mere opinion and conclusion, and such allegations must show that irreparable harm will result should the status quo be impaired prior to the termination of the litigation. (County of DuPage v. Robinette (1966),

77 Ill.App.2d 167, 221 N.E. 2d 769; East Side Health District v. Village of Caseyville (1962), 35 Ill.App.2d 443, 183 N.E. 2d 20.) Irreparable harm is established where the remedy at law is inadequate in that monetary damages either will not adequately compensate plaintiff or cannot be measured by any pecuniary standard. (Simpkins v. Maras (1958), 17 Ill.App.2d 238, 149 N.E.2d 430.) In granting or denying a preliminary injunction, the trial court possesses a broad discretionary power and, absent abuse, the exercise of such discretion will not be disturbed by a court of review. People v. Progressive General Insurance Co. (1967), 84 Ill.App. 2d 109, 228 N.E.2d 146; Gifford v. Rich (1965), 58 Ill.App.2d 405, 208 N.E.2d 47.

A beneficial interest in a land trust is personal property and, to determine whether an estate of homestead attaches to such property, detailed facts pertaining to the creation of the trust must be alleged. (See Sterling Savings & Loan Association v. Schultz (1966), 71 Ill.App 2d 53.) One claiming the benefits of homestead (Ill.Rev. Stat. 1975, ch. 52, par.1, et seq.) must also establish that he meets the statutory requirements. First National Bank & Trust Co. v. Sandifer (1970), 121 Ill.App.2d 479, 258 N.E.2d 35.

Here, to the extent that the trial court's order striking Hutter's petition for equitable relief denied him an injunction to preserve the status quo until

the ultimate disposition of the litigation, it is an appealable order. (Ill. Rev. Stat. 1975, ch. 110A, par. 307(a) (1).) In his petition, Hutter frequently stated opinions and conclusions concerning vague understandings, promises, and inducements without stating when, where and under what circumstances these transactions or interactions occurred. Moreover, he failed to state even in a conclusionary manner that damages would not adequately compensate him should his case be found to be meritorious. The complaint is devoid of factual allegations which show either the manner in which he would be harmed should the court fail to restrain (until the ultimate dispostion of the case), the sale of securities, or the unspecified action which the Bank may take in regard to his beneficial interest in the land trust. Should the securities be transferred and the ultimate resolution be in Hutter's favor, the loss suffered could be fully compensated by damages which could be computed with reasonable certainty. (Gifford v. Rich.) Also, as the beneficial interest is personalty (Sterling Savings & Loan Association v. Schultz,) and because Hutter has not made sufficient allegations showing an interest which amounts to an estate of homestead (First National Bank and Trust Co. v. Sandifer), any loss suffered by Hutter in the alteration of the status quo could also be adequately compensated by damages. Thus, we cannot say that the trial court abused its discretion in striking Hutter's petition for equitable

relief.

Hutter next contends, in 76-1683, that the trial court erred in denying his motion to dismiss the Bank's complaint. We decline to reach the merits of this issue, as the denial of a motion to strike or dismiss of itself is not a final appealable order. (Cahokia Sportservice, Inc. v. Illinois Liquor Control Commission (1975), 32 Ill. App 3d 801, 336 N.E.2d 276.

Hutter's second contention in 76-1683 is that the trial court deprived him "of his day in court" by improperly granting the Bank's motion to dismiss his cross-complaint. We disagree.

Section 48(1)(c) of the Civil Practice Act. (Ill. Rev. Stat. 1975, ch. 110, par. 48(1)(c)) provides:

> "(1) Defendant may, within time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following ground. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit:
>
> * * *
>
> (c) That there is another action pending between the same parties for the same cause."

Two actions are "for the same cause" where relief is sought on substantially the same

set of facts. (Skolnick v. Martin (1964), 32 Ill.2d 55, 203 N.E.2d 428, cert. denied (1965), 381 U.S. 926.) Except in rare cases, the trial court's inquiry is limited to the identity of parties and cause, as section 48(1)(c) "grants a right to dismiss, thus fostering orderly procedure and relieving litigants and courts of unnecessary burdens associated with multiple actions." Gerber v. First National Bank (1975), 30 Ill. App.3d 776, 780, 332 N.E. 2d 615, 618.

Here, while Hutter's original action was against Merrill Lynch as well as the Bank, Merrill Lynch answered that it was not really a party to the transactions between Hutter and the Bank, characterizing itself as a mere stakeholder--which is corroborated by the allegations of Hutter's complaint. Moreover, substantially the same set of facts forms the basis for Hutter's petition and cross-complaint (the latter being more factual in nature than the former) and each seeks the same relief, except Hutter in the cross-complaint omitted the request for injunctive relief. Therefore, we cannot say that the trial court erred in granting the Bank's motion to dismiss.

For the reasons stated, the judgement of the circuit court in cause numbers 76-1472 and 76-1683 is affirmed.

Affirmed.

LORENZ and WILSON, JJ., Concur.

March 30, 1978

No. 50256 - John Hutter, petitioner, vs. Lake View Trust and Savings Bank, et al., respondents. Leave to appeal, Appellate Court, First District.

You are hereby notified that the Supreme Court today denied the petition for leave to appeal in the above entitled cause.

Very truly yours,

Clell L. Woods
Clerk of the Supreme Court